



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,546	07/11/2003	Nathan S. Lewis	06618-892002	5173
41790	7590	08/22/2006	EXAMINER	
BUCHANAN, INGERSOLL & ROONEY LLP P.O. BOX 1404 ALEXANDRIA, VA 22313-1404			LAU, TUNG S	
			ART UNIT	PAPER NUMBER
			2863	

DATE MAILED: 08/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/618,546

Applicant(s)

LEWIS ET AL.

Examiner

Tung S. Lau

Art Unit

2863

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-24 and 55-58.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: See next page.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 08/09/2006 have been fully considered but they are not persuasive.

A. Applicant argues in the arguments that the prior art does not show the fiber-optics cable and/or an air-wave frequency'. The applicant has omitted 'internet' as is part of the claim, the claim read ...transmitting data corresponding to the detectable signal to a remote location via the internet, fiber-optic cable, and/or an air-wave frequency' ... Lewis discloses as indicated office action 07/24/2006 page 3, transmitting data corresponding to the detectable signal to a remote location via the internet (page 13, section 0088), fiber-optic cable, and/or an air-wave frequency; analyzing the data received at the remote location (page 13, section 0088). Reminds the applicants that USPTO personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). And that limitations appearing in the specification but not recited in the claim are not read into the claim. E-Pass Techs., Inc. v. 3Com Corp., 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003). Lewis discloses, ...transmitting data corresponding to the detectable signal to a remote location via the internet (page 13, section 0088), fiber-optic cable, and/or an air-wave frequency; analyzing the data received at the remote location (page 13, section 0088).

B. . Applicant continue to argue in the arguments that the provisional application support 'fiber-optics cable and airwave frequency' in the specification. The evidence that the applicant submitted was that 'transmission across an information network digitally' in the provisional application means for ordinary skill in the art 'fiber-optics cable and airwave frequency'. The 'transmission across an information network digitally' is far from 'fiber-optics cable and airwave frequency'. In view of the disclosure of the applicant provisional application 09568784 page 26, lines 11-15 shows a connection using internet but not using fiber optic cable, air-wave frequency. Skill in the art at the time of the invention was made know that transmission across an information network digitally means transmission across an information network digitally means only transmission such information digitally, no analog information is involved. But Air-wave frequency uses analog (RF transmission) type of transmission and is far from 'transmission across an information network digitally', because RF only involved analog signal, while the RF signal can convert back to digital as in the case of 802.11a, b or satellite communication, the transmission media is analog only (see attachment). (for example, 802.11 a, b, uses an analog frequency of 2.4Ghz **(ANALOG)** for transmission, a satellite communication sometime uses 8, 36 MHZ over TV channels **(ANALOG)** channel to carry data).

As regards to Fiber optics cable, as the attachment shows telephone company uses it to transmit voice over long distances and voice are definitely analog (operate over 300HZ to 3400HZ). (see attachment).

Art Unit: 2863

Therefore, since the application 09/568,784, provisional application 60/140,027 or 60/133, 318 fail to properly support the disclosure in the current application, **the filling date of the current application is June 15, 2000** (filling date of 6,631,333, See MPEP 2133.01). The current prior art rejection using Lewis et al. U.S. Patent Application Publication 2004/0042933, having a priority date of Nov. 16, 1999, therefore is a proper 102(e) date.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tung S Lau whose telephone number is 571-272-2274. The examiner can normally be reached on M-F 9-5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on 571-272-2269. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.

Art Unit: 2863

Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TL



John Barlow
Supervisory Patent Examiner
Technology Center 2800